



FEDERAL ELECTION COMMISSION
Washington, DC 20463

July 27, 2007

MEMORANDUM

To: Thomasenia P. Duncan
General Counsel

Through: Patrina M. Clark *PMC*
Staff Director

From: John D. Gibson *JDG*
Acting Chief Compliance Officer

Joseph F. Stoltz *JFS*
Assistant Staff Director
Audit Division

Alex Boniewicz *AB*
Audit Manager

By: Tesfai Asmamaw *TA*
Lead Auditor

Subject: DeMint for Senate Committee, Inc. (A05-21) - Referral Matters

AUDIT REFERRAL # 07-05

On July 12, 2007, the Commission approved the final audit report on the DeMint for Senate Committee, Inc. The final audit report includes the following matters that are referable:

- Finding 1 – Receipt of Contributions that Exceed Limits meets the criteria for referral to your office. Based on the documentation submitted, the committee received 42 contributions from individuals that exceeded the limit by \$68,106. All refunds have not been documented.
- Finding 2 – Failure to File 48-Hour Notices

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Based on the above, the Audit staff suggests careful consideration should be given to the extent of resources utilized by your office to pursue these matters.

All work papers and related documentation are available for review in the Audit Division. Should you have any questions regarding this matter, please contact Tesfai Asmamaw or Alex Boniewicz at 694-1200.

Attachments:

Finding 1 - Receipt of Contributions that Exceed Limits

Finding 2 - Failure to File 48-Hour Notices

cc: Lorenzo Holloway

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Finding 1. Receipt of Contributions that Exceed Limits

Summary

DFS accepted 42 contributions from individuals that exceeded the limit by \$68,106. Of these excessive contributions, \$63,106 (93%) was eligible for presumptive redesignation. The remaining excessive contributions totaling \$5,000 exceeded the limit per election and could not be resolved through redesignation and/or reattribution based upon available documentation. In response to the interim audit report recommendation, DFS provided copies of notices sent to contributors that were eligible for presumptive redesignation and/or reattribution. In addition, DFS provided copies of six refund checks.

Legal Standard

A. Authorized Committee Limits: An authorized committee may not receive more than a total of \$2,000 per election from any one person. Increased contribution limits are provided for candidates facing self-financed candidates once the self-financed candidates make expenditures from their personal funds that exceed a specific amount. 2 U.S.C. §441a(a)(1)(A) and 11 CFR §§110.1(a) and (b) and 110.9(a).

B. Handling Contributions That Appear Excessive. If a committee receives a contribution that appears to be excessive, the committee must either:

- return the questionable contribution to the donor; or
- deposit the contribution into its federal account and keep enough money on account to cover all potential refunds until the legality of the contribution is established. 11 CFR §103.3(b)(3) and (4).

The excessive portion may also be redesignated to another election or reattributed to another contributor as explained below.

C. Redesignation of Excessive Contributions. The committee may ask the contributor to redesignate the excess portion of the contribution for use in another election.

- The committee must, within 60 days of receipt of the contribution, obtain and retain a signed redesignation letter which informs the contributor that a refund of the excessive portion may be requested; or
- refund the excessive amount. 11 CFR §§110.1(b)(5), 110.1(l)(2) and 103.3(b)(3).

Notwithstanding the above, when an authorized political committee receives an excessive contribution from an individual or a non-multi-candidate committee, the committee may presumptively redesignate the excessive portion to the general election if the contribution:

- Is made before that candidate's primary election;
- Is not designated in writing for a particular election;
- Would be excessive if treated as a primary election contribution; and
- As redesignated, does not cause the contributor to exceed any other contribution limit.

Also, the committee may presumptively redesignate the excessive portion of a general election contribution back to the primary election if the amount redesignated does not exceed the committee's primary net debt position.

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The committee is required to notify the contributor in writing of the redesignation within 60 days of the treasurer's receipt of the contribution and must offer the contributor the option to receive a refund instead. For this action to be valid, the committee must retain copies of the notices sent. Presumptive redesignations apply only within the same election cycle. 11 CFR §110.1(b)(5)(ii)(B) & (C) and (l)(4)(ii).

D. Reattribution of Excessive Contributions. When an authorized committee receives an excessive contribution, the committee may ask the contributor if the contribution was intended to be a joint contribution from more than one person.

- The committee must, within 60 days of receipt of the contribution, obtain and retain a reattribution letter signed by all contributors; or
- refund the excessive contribution. 11 CFR §§110.1(k)(3), 110.1(l)(3) and 103.3(b)(3).

Notwithstanding the above, any excessive contribution that was made on a written instrument that is imprinted with the names of more than one individual may be attributed among the individuals listed unless instructed otherwise by the contributor(s). The committee must inform each contributor:

- how the contribution was attributed; and
- the contributor may instead request a refund of the excessive amount. 11 CFR §110.1(k)(3)(ii)(B).

For this action to be valid, the committee must retain copies of the notices sent. 11 CFR §110.1(l)(4)(ii).

E. Refund or Disgorge Questionable Contributions. If the identity of the original contributor is known, the committee should either refund the funds to the source of the original contribution or pay the funds to the U.S. Treasury. AO 1996-5.

Facts and Analysis

DFS qualified for increased limits afforded candidates opposing self-financed candidates. DFS' limitation was increased threefold (\$6,000) on July 1, 2003 and subsequently six fold (\$12,000) on May 6, 2004. The increased limitation period ended on June 8, 2004, the date of the primary election.

The Audit staff reviewed all contributions from individuals to determine if excessive contributions were received. The Audit staff identified 42 contributions from individuals that exceeded the limit by \$68,106.

Of these excessive contributions, \$63,106 (93%) was eligible for presumptive redesignation. These could be cured by notifying the contributors of DFS's action and offering a refund as provided under 11 CFR §110.1(k)(3)(ii)(B). The remaining excessive contributions totaling \$5,000 exceeded the limit per election cycle and could not be resolved through redesignation and/or reattribution based upon available documentation.

At the exit conference, the Audit staff provided the DFS representative with schedules of the excessive contributions. The representatives stated that they would provide supporting

documents for the excessive contribution during the 10-day response period provided after the exit conference. No additional documentation was received.

Interim Audit Report Recommendation and Committee Response

The Audit staff recommended that DFS:

- Send notices to those contributors that were eligible for presumptive redesignation and/or reattributions (\$63,106) notifying them of DFS's action and offering contributors the option of receiving a refund. DFS was to provide evidence to the Audit staff that the notices were sent and if any refunds were requested; and
- Provide evidence demonstrating that the remaining contributions totaling \$5,000 were not excessive. Absent such evidence, refund \$5,000 to the contributors, or the United States Treasury, and provide evidence of such refunds (copies of the front and back of negotiated refund checks); or
- If funds were not available to make the necessary refunds, disclose the contributions requiring refunds on Schedule D (Debt and Obligations) until funds became available to make such refunds.

In response to the interim audit report recommendation, DFS provided copies of notices sent to contributors that were eligible for presumptive redesignation and/or reattribution. DFS also provided copies of three negotiated refund checks (\$4,000) and of three refund checks prepared but not negotiated totaling \$4,800. Until copies of the negotiated refund checks are submitted, the \$4,800 is considered unresolved.

Finding 2. Failure to File 48-Hour Notices

Summary

It appeared that DFS had not file 48-hour notices for 84 contributions totaling \$174,772 prior to the primary, run-off, and general elections. In response to the interim audit report recommendation, DFS argued that contributions totaling \$59,500 received after the end of the primary 48 hour notice period but before the Candidates participation in the run-off election was assured, did not require notices. In view the circumstances, it was determined that 48 hour notices for the referenced period were not required. Therefore, DFS did not file notices for 67 contributions totaling \$115,272.1

Legal Standard

Last-Minute Contributions (48-Hour Notice). Campaign committees must file special notices regarding contributions of \$1,000 or more received less than 20 days but more than 48 hours before any election in which the candidate is running. This rule applies to all types of contributions to any authorized committee of the candidate. 11 CFR §104.5(f).

Facts and Analysis

The Audit staff reviewed 931 contributions, totaling \$1,616,430, which were greater than or equal to \$1,000 and received during the 48-hour notice filing periods of the primary, run-off, and general elections. It appeared that DFS did not file 48-hour notices for 84 contributions totaling

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\$174,772 (\$6,626 for the primary, \$123,646 for the run-off, and \$44,500 for the general elections).

At the exit conference, the DFS representative was provided schedules of the 48-hour notices not filed. The representative stated that these schedules would be reviewed and any comments or corrections would be submitted in writing. Nothing was received in response to the exit conference.

Interim Audit Report Recommendation and Committee Response

The Audit staff recommended that DFS provide:

- Documentation to demonstrate the contributions in question were properly included in 48-hour notices; or,
- Documentation establishing the contributions were not subject to 48-hour notification; and/or,
- Any written comments it considered relevant.

In response to the interim audit report recommendation, DFS contended that 17 contributions, totaling \$59,500, received on June 7 and 8, 2004, the date of the primary and the preceding day, should be removed from the audit finding because the Candidate was not a run-off candidate when these contributions were received. Those days were after the expiration of the primary election 48-hour notice period, after the beginning of the run-off election 48-hour notice period, but before the run-off was a certainty. DFS explained that the Candidate was not capable of ascertaining whether there would be a run-off election and, if there was one, whether he would be participating in the election. DFS' response does not address the remaining notices.

The Audit staff acknowledges that a run-off election was not a certainty and, neither was the Candidate's participation if it was held. Given the circumstances, it was determined that the 48 notices were not required for contributions received on the primary date and the preceding day. As a result, DFS did not file notices for 67 contributions totaling \$115,272.